

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

ALFREDO FUENTES, :  
 :  
Plaintiff, : Case No. 3:18cv187  
 :  
vs. : JUDGE WALTER H. RICE  
 :  
COMMISSIONER OF SOCIAL SECURITY, :  
 :  
Defendant. :

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DECISION AND ENTRY REJECTING REPORT AND RECOMMENDATIONS  
OF UNITED STATES MAGISTRATE JUDGE (DOC. #14); PLAINTIFF'S  
OBJECTIONS TO SAID JUDICIAL FILING (DOC. #15) SUSTAINED;  
JUDGMENT TO BE ENTERED IN FAVOR OF PLAINTIFF AND AGAINST  
DEFENDANT COMMISSIONER, VACATING DECISION OF DEFENDANT  
COMMISSIONER THAT PLAINTIFF WAS NOT DISABLED AND, THEREFORE,  
NOT ENTITLED TO BENEFITS UNDER THE SOCIAL SECURITY ACT,  
MAKING NO FINDING WHETHER PLAINTIFF IS UNDER SUCH A  
DISABILITY AND REMANDING THE CAPTIONED CAUSE TO THE  
DEFENDANT COMMISSIONER, PURSUANT TO SENTENCE FOUR OF  
42 U.S.C. § 405(g), FOR FURTHER ADMINISTRATIVE PROCEEDINGS SET  
FORTH HEREIN; TERMINATION ENTRY

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Plaintiff has brought this action pursuant to 42 U.S.C. § 405(g) to review a decision of the Defendant Commissioner denying Plaintiff's application for Social Security disability benefits. On August 27, 2019, the United States Magistrate Judge filed a Report and Recommendations (Doc. #14), recommending that the Commissioner's decision that Plaintiff was not disabled and, therefore, not entitled to benefits under the Social Security Act, be affirmed. Based upon both the reasoning and citations of authority set forth in the Magistrate Judge's Report and

Recommendations (Doc. #14), and, to a certain extent, in Plaintiff's Objections to said judicial filing (Doc. #15), as well as upon a thorough de novo review of this Court's file, including the Administrative Transcript (Doc. #6), and a thorough review of the applicable law, this Court rejects the aforesaid Report and Recommendations and, in so doing, vacates the Commissioner's decision that Plaintiff was not disabled and, therefore, not entitled to benefits under the Social Security Act, making no decision as to whether Plaintiff was under such a disability and remanding the captioned cause to the Defendant Commissioner, pursuant to Sentence Four of 42 U.S.C. § 405(g), for further administrative proceedings set forth herein, concluding that the Commissioner's decision that Plaintiff was not disabled and, therefore, not entitled to benefits under the Social Security Act, was not supported by substantial evidence. The Plaintiff's Objections to said judicial filing (Doc. #15) are sustained.

In reviewing the Commissioner's decision, the Magistrate Judge's task is to determine if that decision is supported by "substantial evidence." 42 U.S.C. § 405(g). Under 28 U.S.C. § 636(b)(1)(C), this Court, upon objections being made to the Magistrate Judge's Report and Recommendations, is required to make a de novo review of those recommendations of the report to which objection is made. This de novo review, in turn, requires this Court to re-examine all the relevant evidence, previously reviewed by the Magistrate Judge, to determine whether the findings of the Secretary [now Commissioner] are supported by "substantial evidence." Lashley v. Secretary of Health and Human Services, 708 F.2d 1048, 1053 (6<sup>th</sup> Cir. 1983); Gibson v. Secretary of Health, Education and Welfare, 678 F.2d 653, 654 (6<sup>th</sup> Cir. 1982). This Court's sole function is to determine whether the record as a whole contains substantial evidence to support the Commissioner's decision. The Commissioner's findings must be affirmed if they are supported by

“such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”

Richardson v. Perales, 402 U.S. 389, 401, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971), citing

Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 59 S.Ct. 206, 83 L.Ed.2d 126 (1938);

Landsaw v. Secretary of Health and Human Services, 803 F.2d 211, 213 (6<sup>th</sup> Cir. 1986).

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson, *supra*, at 401. Ellis v. Schweicker, 739 F.2d 245, 248 (6<sup>th</sup> Cir.

1984). Substantial evidence is more than a scintilla, but only so much as would be required to

prevent a directed verdict (now judgment as a matter of law) against the Commissioner if this case

were being tried to a jury. Foster v. Bowen, 853 F.2d 483, 486 (6<sup>th</sup> Cir. 1988); NLRB v.

Columbian Enameling and Stamping Company, 306 U.S. 292, 300 (1939). To be substantial, the

evidence “must do more than create a suspicion of the existence of the fact to be established... [I]t

must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the

conclusion sought to be drawn from it is one of fact for the jury.” LeMaster v. Secretary of Health

and Human Services, 802 F.2d 839, 840 (6<sup>th</sup> Cir. 1986), quoting NLRB v. Columbian Enameling

and Stamping Company, *supra*.

In determining whether the Commissioner’s findings are supported by substantial evidence, the Court must consider the record as a whole. Hephner v. Mathews, 574 F.2d 359 (6<sup>th</sup>

Cir. 1978); Ellis, *supra*; Kirk v. Secretary of Health and Human Services, 667 F.2d 524, 536 (6<sup>th</sup>

Cir. 1984); Houston v. Secretary of Health and Human Services, 736 F.2d 365 (6<sup>th</sup> Cir. 1984);

Garner v. Heckler, 745 F.2d 383 (6<sup>th</sup> Cir. 1984). However, the Court may not try the case *de novo*,

resolve conflicts in evidence or decide questions of credibility. Garner, *supra*. The findings of the

Commissioner of Social Security and proceedings on Claimant’s application for social security

disability benefits are not subject to reversal merely because there exists in the record substantial evidence to support a different conclusion. Buxton v. Halter, Commissioner of Social Security, 246 F.3d 762 (6<sup>th</sup> Cir. 2001). If the Commissioner's decision is supported by substantial evidence, it must be affirmed, even if the Court as a trier of fact would have arrived at a different conclusion. Elkins v. Secretary of Health and Human Services, 658 F.2d 437, 439 (6<sup>th</sup> Cir. 1981).

In addition to the foregoing, in ruling as aforesaid, this Court makes the following, non-exclusive, observations:

1. Plaintiff's treating physicians provided specific functional limitations that were expressly credited by the Administrative Law Judge, then concluded that those limitations were accommodating by limiting Plaintiff to low stress work. Unfortunately, there was no explanation by the Administrative Law Judge explaining how the evidence of record, including those specific functional limitations she credited led to the conclusion that said limitations were accommodated by low stress work. This Court feels that it is hamstrung in its ability to follow the reasoning of the Administrative Law Judge without further explanation from her. In other words, the Court needs to understand the reasoning of the Defendant Commissioner's Administrative Law Judge.

2. Because evidence of disability is not overwhelming, and because, while evidence of disability is strong, there is an unresolved factual issue to determine, remand to the Defendant Commissioner, pursuant to Sentence Four of 42 U.S.C. § 405(g), for further administrative proceedings, to wit: how the limitations credited by the Administrative Law Judge were, in fact, accommodated by limiting Plaintiff to low stress work. Faucher v. Secretary of Health and Human Services, 17 F.3d 171, 176 (6<sup>th</sup> Cir. 1994).

WHEREFORE, based upon the aforesaid, this Court rejects the Report and Recommendations of the United States Magistrate Judge (Doc. #14) in their entirety, having concluded that the Commissioner's decision that Plaintiff was not disabled and, therefore, not entitled to benefits under the Social Security Act, was not supported by substantial evidence. Plaintiff's Objections to said judicial filing (Doc. #15) are sustained. Judgment will be ordered entered in favor of Plaintiff and against Defendant Commissioner, vacating the decision of the Defendant Commissioner that Plaintiff was not disabled and, therefore, not entitled to benefits under the Social Security Act, making no decision as to whether Plaintiff is, in fact, disabled within the meaning of the Act and remanding the captioned cause to the Defendant Commissioner, under Sentence Four of 42 U.S.C. § 405(g), for further Administrative proceedings as set forth herein.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

September 30, 2019



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WALTER H. RICE, JUDGE  
UNITED STATES DISTRICT COURT

Copies to:

Counsel of record